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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12-92; RM-11650, RM-11679, DA 13-1567]

Radio Broadcasting Services; Centerville, Lovelady, Midway, and Oakwood, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau grants a Petition for Rule Making filed by Katherine Pyeatt by allotting alternate FM Channel 251A at Midway, Texas, and also grants a Counterproposal filed by Roy E. Henderson for a new allotment on Channel 233A at Oakwood, Texas. Additionally, the document clarifies the circumstances under which an otherwise timely filed counterproposal in an FM allotment proceeding may be amended to cure a conflict with a previously filed application. Finally, the Bureau bifurcates two hybrid applications filed by Henderson from the Counterproposal and will consider them at a later date. See Supplementary Information.

DATES: Effective September 9, 2013.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes or Rolanda F. Smith, Media Bureau, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 12-92, adopted July 11, 2013, and released July 12, 2013. See also Notice of Proposed Rule Making, 77 FR 25112, published April 27, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's

Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or via e-mail www.BCPIWEB.com. The Commission will send a copy of this Report and Order in a report to Congress and the Governmental Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Although Henderson’s Counterproposal was timely filed on the counterproposal deadline of May 29, 2012, a conflicting minor modification application was filed on May 21, 2012. Under the Note to Section 73.208(a)(3) of the Commission’s Rules, if an otherwise timely filed counterproposal is in conflict with a previously filed application, the counterproposal can be considered if it is amended to remove the conflict within 15 days from the date the counterproposal appears on public notice. The Note also requires a counterproponent to show that it could not have known of the pending conflicting FM application by exercising due diligence. While Henderson submitted an amendment to resolve the conflict within 15 days from the release of the Public Notice accepting the counterproposal, the document explains that the facts of this case present a close question as to whether the necessary “due diligence” was exercised that would warrant

acceptance of the Amendment. Under these circumstances, the Bureau concludes that the public interest is, on balance, better served by accepting Henderson's amendment and resolving this case on section 307(b) grounds than by basing its decision on a tenuous interpretation of the "due diligence" requirement of the rule.

The Bureau also clarifies how it will handle similar matters on a going-forward basis. First, the Bureau clarifies that prospective counterproponents in FM allotment rule making proceedings are required to take into account all FM application filings "released" by Broadcast Actions Public Notices more than 15 days from the counterproposal deadline. Unacceptable counterproposals under this fact scenario will be dismissed. Second, applicants are required to confirm the acceptability of their engineering no more than five business days prior to the counterproposal deadline. If changes to the Commission's database occur between 5 and 15 days from the counterproposal deadline and result in a conflict, the counterproposal must note the conflict and must request release of a Public Notice starting a 15-day cure period. Failure to note a conflict under these circumstances results in dismissal of the counterproposal. Third, the Bureau clarifies that conflicting applications announced by Broadcast Actions Public Notices less than five business days from the counterproposal deadline do not have to be noted or accounted for in an otherwise timely filed counterproposal. Under these circumstances, we will issue a Public Notice, and counterproponents will have 15 days to resolve the conflict.

The reference coordinates for Channel 251A at Midway, Texas, are 31-03-40 NL and 95-45-00 WL. The reference coordinates for Channel 233A at Oakwood, Texas, are 31-39-42 NL and 95-52-53 WL. Further, the use of alternate Channel 251A at Midway eliminates the need for a related channel substitution at Centerville as proposed in the Notice. Likewise, Henderson's

Amendment to his Counterproposal eliminates the need for the substitution of Channel 232A for vacant Channel 288A at Lovelady because it proposes to change the reference coordinates for Channel 288A at Lovelady in order to accommodate one of the “hybrid” applications. This aspect of the Counterproposal will be considered at a later date along with these non-mutually exclusive applications (File Nos. BPH-20120529ADK and BPH-20120529ADI).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting

FEDERAL COMMUNICATIONS COMMISSION.

Nazifa Sawez,
Assistant Chief, Audio Division, Media Bureau

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 - RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Midway, Channel 251A, and Oakwood, Channel 233A.

[FR Doc. 2013-18177 Filed 08/08/2013 at 8:45 am; Publication Date: 08/09/2013]